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OFFICE OF PETITIONS

In re Application :
Michael A. Poteet :
Application No. 10/788,877 : DECISION ON APPLICATION
Filed: February 27, 2004 : FOR PATENT TERM ADJUSTMENT
Atty Docket No. 006417.00002 :

This is a decision on the "PETITION FOR PATENT TERM ADJUSTMENT" filed November 17, 2006. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from seventy-seven (77) days to one hundred twelve (112) days.

The application for patent term adjustment is DISMISSED.

On October 6, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is seventy-seven (77) days. On November 17, 2006, Applicant timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one hundred twelve (112) days. Applicant states that the patent issuing from the application is not subject to a terminal disclaimer.

¹ Applicants filed the application for patent term adjustment together with the filing of the issue fee.

The Office initially determined a patent term adjustment of seventy-seven (77) days based on an adjustment for PTO delay of seventy-seven (77) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by zero (0) days of applicant delay.

Applicant asserts entitlement to a patent term adjustment of one hundred twelve (112) days on the basis that the PTO did not timely mail a response to the Amendment filed on November 29, 2005. While the Office mailed a Notice of Allowance on February 9, 2006, it was withdrawn by the Office *sua sponte* on February 21, 2006. The Office then mailed a non-final Office action on May 3, 2006. Accordingly, Applicant asserts that the PTO should have been assessed delay of thirty-five (35) days, representing the number of days beginning on March 30, 2006 and ending on May 3, 2006.

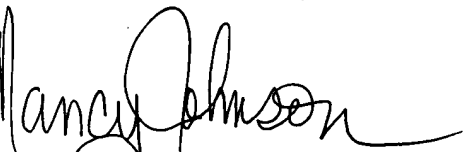
Applicant's argument has been considered, but is not persuasive. Pursuant to 37 C.F.R. § 1.703(a)(2), the Office had until March 29, 2006 to mail an action under 35 U.S.C. 132 or a Notice of Allowance. The Office did timely mail a Notice of Allowance. While the Notice was withdrawn, it was not vacated.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **seventy-seven (77) days** (77 days of PTO delay and 0 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions